



February 12, 1999

Ms. Donna Garcia Davidson
Assistant General Counsel
State of Texas Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR99-0440

Dear Ms. Davidson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 122108.

The Office of the Governor (the "Governor") received a request for a report by the Governor's Task Force on Illegal Gambling. You submit to this office a draft of a final report that you state is to be published and released within the next ten working days. You assert that the requested document is excepted from disclosure by section 552.111 of the Government Code, protecting from disclosure advice, opinion, and recommendations. We have considered the exception you claim and have reviewed the document at issue.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception applies not only to a governmental body's internal memoranda, but also to memoranda prepared for a governmental body by its outside consultant. Open Records Decision Nos. 462 at 14 (1987), 298 at 2 (1981). In Open Records Decision No. 615 (1993) this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1993).

The preliminary draft of a policymaking document that has been released or is intended for release in a final form is excepted from disclosure under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990). Purely factual matter, where severable, must generally be released. *Id.* However, when such factual matter is contained in the final version of the document, the release of the final version satisfies this requirement. *Id.*

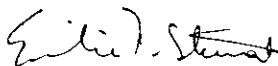
Governor Bush formed the Task Force on Illegal Gambling (the "task force") to address the increase in illegal gambling in Texas, specifically, the rise in the use of eight-liners. Among other things, the report of the task force presents the findings and recommendations of the task force. You indicate that the final report will be released ten days from the date of your letter. You also state:

The submitted document is being forwarded to the requestor with redactions in accordance with this request. In addition, all of the other responsive materials have been compiled and have been mailed to the requestor.¹

The report contains advice, opinions, and recommendations reflecting the policymaking processes of the Governor. Under these circumstances, we conclude that the Governor may withhold the draft report from disclosure in its entirety under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 122108

¹We note that there are no marked redactions.

Enclosures: Submitted documents

cc: Mr. William C. Blount
6850 Austin Center Boulevard
Suite 100
Austin, Texas 78731
(w/o enclosures)